

**To:** Dravis, Samantha[dravis.samantha@epa.gov]  
**From:** POLITICO Pro Energy  
**Sent:** Mon 2/26/2018 10:42:26 AM  
**Subject:** Morning Energy, presented by Chevron: In Pruitt era, if FOIAs fail, sue — What's next for carbon capture? — Trump to consider Pruitt, Perdue RFS proposal

By Kelsey Tamborrino | 02/26/2018 05:41 AM EDT

*With help from Eric Wolff, Alex Guillén and Darius Dixon*

**IF ALL ELSE FAILS, SUE:** EPA has experienced a surge in open records lawsuits following the inauguration of Donald Trump, a POLITICO review found. The lawsuits show a heightened sense of secrecy in the agency tasked with protecting the environment, as outside groups question the administrator's travels, meetings and policy decisions. Critics of the agency say the suits demonstrate just how far EPA is willing to go to flout FOIA under Scott Pruitt's tenure.

**By the numbers:** The lawsuits have come from a range of open government groups, environmentalists and even conservative organizations, Emily Holden reports, after they hit a wall trying to pry information out of Pruitt's agency. All told, plaintiffs have filed 55 public records lawsuits against EPA since Trump's inauguration, according to a review of a database of cases compiled by The FOIA Project, an initiative run by the Transactional Records Access Clearinghouse at Syracuse University. Forty-six of those lawsuits came in 2017 — making it the busiest calendar year by far, according to data stretching back to 1992. The second-busiest year was 2015, when plaintiffs filed 22 such suits against the agency, Emily reports. George W. Bush's EPA faced only 57 FOIA lawsuits during his entire presidency, according to the database's list of cases.

**According to a separate data analysis** that the Project on Government Oversight conducted for POLITICO, EPA has been especially slow to resolve information requests directed specifically at Pruitt's office. The data show that EPA has not started evaluating the vast majority of requests for information on Pruitt and has closed less than one-fifth of the requests directed at the administrator's office. From Jan. 20, 2017, to the end of last year, EPA received 11,431 FOIA requests, up about 17 percent compared with an equivalent period during Obama's last year in office, according to the analysis by POGO.

**EPA spokeswoman Liz Bowman tells Emily** the agency is focused on clearing a backlog of requests left over from previous administrations, while responding to "the large volume of incoming requests." EPA had more than 650 requests open from previous years as of early October and has since closed 60 percent of them, Bowman said. Read the full story [here](#).

**WELCOME TO MONDAY!** I'm your host Kelsey Tamborrino, and Andeavor's Stephen Brown was first to identify Frances Perkins as the first woman appointed to a Cabinet position, which was Labor secretary. For today: What was the name of the first female House page? Send your tips, energy gossip and comments to [ktamborrino@politico.com](mailto:ktamborrino@politico.com), or follow us on Twitter [@kelseyam](#), [@Morning\\_Energy](#), and [@POLITICOPro](#).

**New! Campaign Pro Race Dashboard**, POLITICO Pro's campaign tracking solution, is

revamped and ready for 2018. The tool features biographical candidate pages and a dedicated race dashboard for each House, Senate and gubernatorial contest. You also get access to FEC campaign finance data for federal elections. Campaign Pro Race Dashboard is now available to POLITICO Pro Campaigns subscribers. [Learn More.](#)

**WHAT NOW?** The surprise inclusion of a carbon capture and sequestration tax credit in the recent budget package has spurred optimism among its supporters, who ask how they can make a technological leap in the fight against climate change. But optimism aside, Pro's Anthony Adragna reports getting major new projects off the ground will likely remain a tough sell.

**Sen. Heidi Heitkamp, who spearheaded the measure,** is aiming to bring down the project costs of CCS technology, by allowing a broader group of facilities like factories and ethanol plants to claim the tax credit. Oil producers who use captured carbon for enhanced oil recovery will be eligible for a \$35-per-ton tax credit, and anyone who permanently stores carbon underground can claim a \$50 per ton. "Trust me, people are going to take advantage of this credit and, as a result, technology for carbon capture and sequestration and utilization is going to accelerate," she said. Heitkamp tapped a diverse array of allies ranging from climate hawks like [Sheldon Whitehouse](#) to pro-coal Republicans like [John Barrasso](#) and outside pro-business groups to overcome resistance from House Speaker [Paul Ryan](#) and House Ways and Means Chairman [Kevin Brady](#).

**Some critics see the credit as an unnecessary reward** for fossil fuel companies whose climate benefits are counteracted by spurring additional oil production. The Natural Resources Defense Council, for example, has pulled out of the newly rebranded Carbon Capture Coalition, saying it does not support "subsidies for enhanced oil recovery." But Whitehouse said it was worth it to get Congress on the record about what a ton of carbon should cost. "Unfortunately, we had to build it into the tax code as a benefit rather than putting it in as a fee, which would be a much more economy-wide way to go, but I'll take that opening because now we're in the conversation about paying for carbon-free power," Whitehouse said. Read [more](#).

**TRUMP TO CONSIDER PRUITT, PERDUE RFS PROPOSAL:** Pruitt and Agriculture Secretary Sonny Perdue will meet with Trump today to present a package of changes to the Renewable Fuel Standard to end tensions over the program between corn farmers and refiners. The two men will propose capping the price of biofuel credits (called Renewable Identification Numbers), a year-round waiver for the sale of 15 percent ethanol gasoline, the creation of credits for exported ethanol, and a transparency measure intended to cut Wall Street investors out of trading in the program. All of the proposals would be executed administratively, rather than legislatively. The pitch to Trump precedes a Tuesday meeting between the president and Sen. [Chuck Grassley](#), [Joni Ernst](#), [Ted Cruz](#) and [Pat Toomey](#).

**Basically the Cruz proposal:** Cruz has been proposing the waiver-for-RIN-cap package for months now and getting nowhere with corn-staters. The addition of allowing

credits for exports, which Pruitt floated and abandoned last year after an uproar from Gang Grain, seems unlikely to add to its appeal, though ethanol producers have expressed openness to the transparency measure. A refining source says the legal authority for some of these measures is "highly doubtful, but by the time the rule is final and then litigated, authors will be long gone from the scene. Think at least 2-2.5 years. God only knows what gyrations the market will endure in the interim."

**Independent refiners are in:** Another source says the proposals "would result in more predictability in the RINs market and in expanded biofuels sales and higher blends. That's the sort of win-win Cruz and Toomey seem to have been referring to. And this process seems not to require legislative action, therefore ensuring faster results."

**Catching the president's eye:** Ahead of the Tuesday meeting, Fuels America will launch a TV ad on "Fox & Friends" in the D.C. market starting today through Tuesday. The ad thanks Trump for his commitment to the RFS. Watch it [here](#).

**POWER TO THE STATES :** Democratic governors across the U.S. are merging to fight back against administration policies they find hard to swallow, POLITICO's Edward-Isaac Dove and Gabriel Debenedetti report. The 16 governors are looking to return power to the state-level on issues including climate and infrastructure, and they used this weekend's National Governors Association conference to boast of "pushback to damaging Trump policies." "We have a national administration that is not keeping with where the American people are, and when it becomes as evident as it is, then it's incumbent on people with half a brain to figure out a way around that," said Connecticut Gov. Dannel Malloy, a member of the Climate Alliance formed in the wake of Trump's pullout from the Paris climate agreement. Read [more](#).

**MEN AT WORK:** House Natural Resources Chairman [Rob Bishop](#) took a bipartisan congressional delegation to Australia and New Zealand for energy and defense-related activities, a [committee aide](#) told Anthony on Friday. The lawmakers were there to look at energy activities in Australia and examine New Zealand's deregulation of its energy sector and learn about "the strategic importance of the two nations as a counterbalance to less-friendly powers in the Pacific," the aide said.

**MURRAY-OLIVER CASE DISMISSED:** A West Virginia judge dismissed the defamation lawsuit brought by coal magnate Bob Murray's against HBO comedian John Oliver, following a [June segment](#) on Murray and his coal companies, where Oliver said Murray looked like a "geriatric Dr. Evil." The court said Murray's company failed to state a claim, according to a [two-page ruling](#) posted by The Hollywood Reporter. Murray's company [told the Hill](#) it plans to appeal the decision to West Virginia's Supreme Court "immediately."

**SPEAKING OF COAL:** Interior Secretary Ryan Zinke headed to Pennsylvania coal country this weekend [to announce](#) \$300 million in grants to states and tribes to reclaim and repurpose abandoned mine lands. Picture [here](#).

— **Zinke also announced a \$60 million cooperative agreement** with the Recreational Boating and Fishing Foundation on Friday to retain and recruit recreational anglers and boaters of all ages. Zinke made the announcement prior to attending a "Saluting the Nation's Governors as Champions of the Great Outdoors" event, hosted by The Outdoor Recreation Roundtable and The Great Outdoors Month Council, according to Interior.

**PRUITT PLAYS THE HITS AT CONSERVATIVE CONFAB:** Pruitt largely stuck to his stump speech during a 20-minute Friday night headlining appearance at CPAC's Ronald Reagan dinner. He said the Obama administration "weaponized against certain sectors of our economy," especially coal; touted his deregulatory efforts; said America is "blessed" with natural resources to use; dinged the Obama administration for environmental disasters on its watch, like Gold King and Flint; blamed Obama for growing the Superfund list; and said Trump has "courage" and is about "getting results."

**On WOTUS:** Pruitt noted Trump assigned him to pull back on federal water jurisdiction, and alleged WOTUS was solely a power grab by the Obama administration unrelated to protecting water quality. He added: "Make no mistake about it. It's not about water quality, it's not about that. It truly is about power and jurisdiction and oversight that was being stretched so far." Pruitt got applause from the crowd when he mentioned the new version of WOTUS will be based on Justice Antonin Scalia's part of the Rapanos ruling.

**He'll always have the Paris pullout:** Asked what he was proudest of, Pruitt immediately mentioned getting the president to announce he will withdraw from the Paris climate accord. Trump "knocked it out of the park," Pruitt said.

**Following the appearance at CPAC,** Pruitt appeared on Fox News for a one-on-one interview with Jeanine Pirro discussing EPA's sue-and-settle policy, the end of the "war on coal" and the move to de-regulation. Watch here.

**\*\* A message from Chevron:** When an endangered butterfly was found near a Chevron refinery, we protected the habitat and still plant the only thing they eat—buckwheat. Watch the video: <http://politi.co/2sNtZTu> \*\*

**THREAD ???** The White House was not pleased with a July 2017 GQ profile of Zinke, according to FOIA documents tweeted out by Huffington Post's Chris D'Angelo.

According to an email from Andrew Hemming to a number of White House staffers — with the subject line, "Flagging — Zinke a bit out over his skis in a GQ interview" — the Cabinet communications staffer was concerned with a few "eyebrow-raising" answers given by Zinke. The White House contacted Interior about the interview, to which Interior drafted a statement that said the reporter of the profile had "selectively used quotes out of context to write a story that fit her pre-conceived narrative." See the thread here.

**FERC ANOTHER DAY:** The nation's electricity regulators were slated to appear in front of a House Energy and Commerce subcommittee this Thursday but the hearing was canceled late last week. The hearing was announced several weeks ago but was postponed due to "a change in the House schedule," a spokesman said. A new hearing

date hasn't been setup yet. The House has canceled votes for Wednesday and Thursday when the late Rev. Billy Graham will lie in honor in the Capitol.

**SPOTTED:** Former Energy Secretary Ernest Moniz on a flight Sunday night from Boston to DCA.

**ENERGY PAC ENDORSES 2 MORE:** The ClearPath Action Fund announced today that it's endorsing Florida Rep. [Carlos Curbelo](#) and Nevada Sen. [Dean Heller](#), Pro's Elena Schneider [reports](#). "Rep. Curbelo and Sen. Heller have really put their shoulders to the wheel for clean energy, for the good of their constituents and for the country," said Jay Faison, the founder of the super PAC. Curbelo is co-founder and co-chair of the Climate Solutions Caucus.

**PREPA LOANED MILLIONS FOR POWER:** The Puerto Rico Power Authority accepted an emergency loan of \$300 million from the island's treasury on Friday, allowing the utility to avert any power cuts to customers. "The \$300 million loan and cost-savings from PREPA's Strategic Emergency Operations Plan will give PREPA needed liquidity to mid-April," said Ernesto Sgroi, president of the PREPA governing board.

**MOVER, SHAKER:** The National Wildlife Federation announced today Sarah Laskin will join the organization as vice president of its national advocacy center in D.C. Laskin previously worked at the National Geographic Society as senior vice president and COO for science and exploration programs.

— **Today is Robbie Myers first day** as digital director for the Energy Department. He previously was digital director at the Senate Republican Conference.

**MAIL CALL!** Sens. [Michael Bennet](#) and [Tim Scott](#) sent a letter last week to the president, urging him to lift his planned 30 percent tariff on imported solar panels and solar cells. Read the letter [here](#).

## QUICK HITS

- Left to Louisiana's tides, a village fights for time, [The New York Times](#).
- Zinke held onto undisclosed shares in gun company, [the Huffington Post](#).
- U.S. lands agency makeover would diminish Washington's power, [Associated Press](#).
- The Energy Department took down anti-leaking posters after an investigation, [BuzzFeed](#).
- PJM prepares response to FERC in grid resilience proceeding, [S&P Global](#).
- Oklahoma judge says suit over Tar Creek audit can proceed, [Associated Press](#).

## HAPPENING THIS WEEK

## MONDAY

9:30 a.m. — Environmental and Energy Study Institute's Climate and National Security Forum 2018, HVC-200

9:30 a.m. — Center for Strategic and International Studies discussion on "The BP Energy Outlook 2018," 1616 Rhode Island Avenue NW

10:00 a.m. — Bipartisan Policy Center discussion on "Improving the Efficiency of U.S. Export Controls for Nuclear Energy Technologies," 1225 Eye St NW

## TUESDAY

10:00 a.m. — The House Science Research and Technology Subcommittee hearing on "A Review of Sexual Harassment and Misconduct in Science," 2318 Rayburn

10:00 a.m. — The House Energy and Commerce Energy Subcommittee hearing on the "State of the Nation's Energy Infrastructure," 2123 Rayburn

10:00 a.m. — House Natural Resource Committee hearing on various bills, 1324 Longworth

2:00 p.m. — House Natural Resources subcommittee hearing on "Liquefied Natural Gas and U.S. Geopolitics," 1324 Longworth

## WEDNESDAY

8:00 a.m. — American Chemistry Council holds its Global Chemical Regulations conference and exhibition, 2500 Calvert Street NW

8:30 a.m. — EPA listening session on the proposed repeal of the Clean Power Plan, San Francisco

9:00 a.m. — The 2018 Climate Leadership Conference, Denver, Colo.

10:00 a.m. — House Transportation Water Resources and Environment Subcommittee hearing on "America's Water Resources Infrastructure: Projects and Policies," 2167 Rayburn

10:00 a.m. — Senate Energy and Natural Resources subcommittee hearing on various bills, 366 Dirksen

10:15 a.m. — House Energy and Commerce Oversight Subcommittee hearing on "Update on the Restoration of Puerto Rico's Electric Infrastructure," 2322 Rayburn

2:00 p.m. — House Natural Resources Committee hearing on various bills, 1324

Longworth

## THURSDAY

9:30 a.m. — Woodrow Wilson Center's Environmental Change and Security Program discussion on "Women on the Front Lines of Change: Empowerment in the Face of Climate and Displacement," 1300 Pennsylvania Avenue NW

10:00 a.m. — Senate Energy and Natural Resources Committee hearing on "Cybersecurity in our Nation's Critical Energy Infrastructure," 366 Dirksen

## THAT'S ALL FOR ME!

**\*\* A message from Chevron:** This is a story about DOERS, butterflies, and buckwheat. In '75, the endangered El Segundo Blue butterfly was found near a Chevron refinery. We protected the habitat and planted the only thing they eat—buckwheat. Watch the video: <http://politi.co/2Fkoq1m> \*\*

*To view online:*

<https://www.politicopro.com/newsletters/morning-energy/2018/02/in-pruitt-era-if-foias-fail-sue-114961>

## Stories from POLITICO Pro

### Anti-secrecy lawsuits soaring against Pruitt's EPA [Back](#)

By Emily Holden | 02/26/2018 05:01 AM EDT

The Environmental Protection Agency has experienced a huge surge in open records lawsuits since President Donald Trump took office, an analysis of data reviewed by POLITICO shows — a trend that comes amid mounting criticism of EPA's secrecy about Administrator Scott Pruitt's travels, meetings and policy decisions.

The legal attacks also reflect widespread interest in the sweeping changes Pruitt is enacting.

The suits have come from open government groups, environmentalists and even conservative organizations that have run into a wall trying to pry information out of Pruitt's agency. The documents they're seeking involve a broad swath of decisions, ranging from EPA's reversals of the Obama administration's landmark climate change and water rules to pesticide approvals and plans for dealing with the nation's most polluted toxic waste sites.

Several of the cases involve requests for the administrator's schedules and travel records, which EPA released routinely under past administrations but now refuses to make public except in response to lawsuits. Pruitt has drawn criticism for withholding information about those matters, and for the expenses he has run up by demanding round-the-clock security, installing an eavesdropping-proof chamber in his office and flying first class to avoid potential threats from

critics in the coach cabins.

All told, plaintiffs have filed 55 public records lawsuits against EPA since Trump's inauguration, according to POLITICO's review of a database of cases compiled by [The FOIA Project](#), an initiative run by the Transactional Records Access Clearinghouse at Syracuse University.

Forty-six of those lawsuits came in 2017, making it the busiest calendar year by far for open-records cases brought against EPA, according to data stretching back to 1992. The second-busiest year was 2015, when plaintiffs filed 22 such suits against the agency as it was completing major rules on topics such as wetlands protection and power plants' carbon pollution. The federal government as a whole has seen a rise in lawsuits over public records during Trump's presidency, but not at anywhere near the rapid uptick EPA is experiencing.

Former President George W. Bush's EPA — hardly a darling of the environmental movement — faced only 57 FOIA lawsuits during his entire presidency, according to the database's list of cases.

The agency has been especially slow to resolve information requests directed specifically at Pruitt's office, according to a separate data analysis that the Project on Government Oversight conducted for POLITICO.

Pruitt's critics say the surge demonstrates how blatantly EPA is flouting the Freedom of Information Act under his reign.

"The FOIA process isn't optional," Sen. Tom Carper (D-Del.) said in an emailed statement. "The American people are entitled to know what government officials, including Mr. Pruitt, are doing with their time and taxpayer money. Yet, from the agency's refusal to document major environmental policy decisions, to the fictitious '[blanket waiver](#)' that it tried to use to justify Mr. Pruitt's travel expenses, this EPA is evasive when it should be working to be transparent."

EPA has seen a jump in FOIA requests under the Trump administration, especially for information specifically from Pruitt's office. That increase, plus the agency's new emphasis on answering years-old requests before addressing newer ones, has frustrated groups seeking the documents behind Pruitt's rollback of environmental regulations.

From Jan. 20, 2017, to the end of last year, EPA received 11,431 FOIA requests, up about 17 percent compared with an equivalent period during former President Barack Obama's last year in office, according to the analysis by POGO. Requests targeted at Pruitt's office in particular rose fivefold to 1,181.

But Pruitt's office has closed only about 17 percent of the requests that deal specifically with his activities. EPA has been faster to resolve requests to other offices — the agency overall has closed 79 percent of FOIA requests filed since Trump's swearing-in, and its Washington headquarters has closed 57 percent, the POGO numbers show. Closed cases include those in which EPA either provided some or all of the requested documents or declined to provide them.



If EPA ignores a FOIA request for more than a month or rejects it, filers can take the agency to court to try to force it to hand over documents.

The 55 FOIA lawsuits filed against EPA since Trump took office compare with 11 filed in the final 12 months of the Obama administration, according to The FOIA Project's database.

Those lawsuits, filed by groups ranging from Earthjustice to the conservative Cause of Action Institute, are seeking evidence of what businesses Pruitt might have consulted before deciding how to regulate pesticides, what information EPA considered in postponing rules for coal-fired power plants discharging polluted wastewater into waterways, and whether agency staffers are using encrypted messaging apps to evade records laws.

The lawsuits aim to compel EPA to provide Pruitt's calendars and messages, as well as records about Pruitt's plans for holding a debate about the scientific reality of climate change, and what he's said in closed-door speeches to industry groups. The Sierra Club is also seeking documents about how EPA is processing FOIA requests, and two groups — Citizens for Responsibility and Ethics in Washington and Public Employees for Environmental Responsibility — filed a suit last week alleging that Pruitt has illegally told staffers not to take notes.

Environmental groups say they've seen a marked slowdown since Trump took office.

"As the administration has shown us time and time again, they're operating under a cloud of secrecy that is further underscored by agencies like the EPA and their delay tactics by not responding to FOIA requests within the time frame that the statute requires," said Margaret Townsend, an open government staff attorney at an environmental group called the Center for Biological Diversity. "The administration is so favorable to industry at the expense of human health and the environment. The American people don't have the same ability — even though they have the right — to get this information."

Eric Schaeffer, director of the Environmental Integrity Project, said EPA's tactics seem designed to throw sand in the gears of the FOIA process.

"I think the idea is make it take a long time," he said. "Why would you do that? Maybe that will result in fewer requests and less disclosure and maybe [they will] be out of here before some of this stuff starts turning up."

But Lee Steven, assistant vice president at the Cause of Action Institute, said his group has long had trouble getting public records from EPA, even before Pruitt took over.

"We've found that if we really want to get movement on these FOIA requests, we have to sue," said Steven, whose group is suing over records showing which staffers may be using encrypted messaging apps like Signal. "Most institutions that do FOIA requests don't have the resources, time or expertise to do that. That's not how it should be. You should not have to sue as a matter of course."

EPA spokeswoman Liz Bowman said the agency is focused on clearing a backlog of requests left

over from previous administrations, while responding to "the large volume of incoming requests." EPA had more than 650 requests open from previous years as of early October and has since closed 60 percent of them, Bowman said.

FOIA staffers recently participated in a multiday event with EPA's Office of General Counsel to more efficiently process requests submitted to Pruitt's office, and they will take part in another event this month to improve efforts agency-wide, she added.

"This was an intensive effort led by career staff to maximize efficiencies, ensure the best use of resources and improve response time," Bowman said.

EPA critics acknowledge that the FOIA process has always been slow and imperfect, though some say it has degraded even further during Pruitt's tenure. "It's terrible for everyone," Schaeffer said. "When you send your FOIA in you have to really dog it to make sure it goes to the right office and they understand the request. I think there are sort of long-term chronic issues, and I think it's gotten worse."

But environmental groups say EPA is using the backlog as an excuse to withhold current records. They are concerned that senior staffers are vetting the records releases, reviewing the information for politically sensitive details and slowing down the process. They also say EPA is increasingly shooting down their requests as overly broad and asking them for specific search terms, rather than topics or types of communications.

"There's no question in my mind that Scott Pruitt's administrator's office is a serious obstacle to FOIA compliance," said Austin Evers, executive director of the government transparency group American Oversight, which has obtained several months of Pruitt's calendars through court action. "We experience it firsthand every day with straightforward FOIA requests languishing in his office for weeks at a time in a black hole."

Earthjustice is part of a coalition suing for records about EPA's decision to postpone wastewater discharge rules for power plants.

"This is not how government should work," said Thomas Cmar, a staff attorney for Earthjustice. "The intent behind FOIA is that citizens are supposed to have the right to know what their government is up to, and clearly under this administration that's not happening. Even if the process works the way it's supposed to, you don't get your documents until a year after your request."

Public Employees for Environmental Responsibility, one of the watchdog groups suing Pruitt for allegedly telling staffers not to keep records, has also filed a lawsuit seeking communications about how Pruitt decided, in contrast to scientific consensus, that man-made emissions of carbon dioxide aren't warming the planet.

"Virtually all of our EPA requests are going to litigation because there's not any indication there will be production," PEER Executive Director Jeff Ruch said.

Despite criticisms about its lack of transparency, Pruitt's staff has declined to release his schedule ahead of time, contending it would jeopardize his security. In the past few weeks, he has appeared unannounced in Florida to meet with the state Farm Bureau and Chamber of Commerce, then spoke at an event hosted by the conservative Federalist Society at a Walt Disney World resort. He made a surprise trip to New Hampshire, where he met privately with Gov. Chris Sununu. He had planned a trip to Israel but postponed it after media reports detailing his first-class travel, which were triggered by FOIA responses that EPA released during legal battles with the Environmental Integrity Project.

EPA does post Pruitt's past schedule on a public website, but the listings do not include all his meetings and rarely list attendees or the topics discussed. Some of the calendars Pruitt has released under FOIA lawsuits have also proved to be incomplete.

One updated record released to the Environmental Integrity Project in October included a previously undisclosed March 29, 2017, meeting between Pruitt and an executive from WaterGen, an Israeli company that sells technology that generates drinking water from air condensation. That meeting, the updated calendar noted, "came as a request of Sheldon Adelson," the casino billionaire and Republican megadonor.

Other than suing, groups concerned about how Pruitt is running the agency have little leverage in forcing the agency to open its files, because Republicans control the White House and both chambers of Congress.

*Alex Guillén contributed to this report.*

*To view online [click here](#).*

[Back](#)

## **New carbon capture tax credit sparks hope among odd collection of backers** [Back](#)

By Anthony Adragna | 02/26/2018 05:02 AM EDT

A surprise victory for a carbon capture and sequestration tax credit in the budget package has spawned optimism among its odd coalition of backers that they can make a technological leap in the fight against climate change — but getting major new projects off the ground will still be a heavy lift.

The aim, according to Sen. [Heidi Heitkamp](#) (D-N.D.), who spearheaded the measure, is to bring down the project costs of CCS technology by allowing a broader group of facilities like factories and ethanol plants to claim the tax credit.

"The net result is we are going to stay in an all-of-the-above energy world. And that's very positive," Heitkamp told POLITICO. "Trust me, people are going to take advantage of this credit and, as a result, technology for carbon capture and sequestration and utilization is going to

accelerate."

Key to Heitkamp's success in tacking the tax credit into the budget package that passed Congress this month was bringing together Democratic climate hawk Sheldon Whitehouse (R.I.) with pro-coal Republican lawmakers, including Sens. Shelley Moore Capito (R-W.Va.) and John Barrasso (R-Wyo.).

They were backed by groups that worked behind the scenes to lobby support for the tax credit. That coalition, rebranded last week as the Carbon Capture Coalition, has built a membership that includes nearly 50 groups such as the Bipartisan Policy Center, National Farmers Union, Renewable Fuels Association and oil and gas giant Shell Oil.

"Even by Washington standards, it was a little bit of a strange group of folks," said Richard Reavey, vice president of government affairs with coal mining company Cloud Peak Energy, one of the groups backing the effort.

Despite the push from Heitkamp and the backing of powerful lawmakers like Senate Majority Leader Mitch McConnell and Budget Chairman Mike Enzi (R-Wyo.), the provision had been opposed by Speaker Paul Ryan and House Ways and Means Chairman Kevin Brady (R-Texas), who repeatedly cut it when it would reappear in new iterations of the budget deal, multiple people tracking the agreement said. One House GOP source said the two had "opposed using this as a vehicle to create new tax breaks that pick winners and losers."

But outside groups ramped up their lobbying efforts, and Texas Republicans in the House urged Brady to back its inclusion. And Rep. David McKinley (R-W.Va.) made the case to colleagues that expanding the credit would help the Trump administration deliver on its promise to revitalize coal communities.

"We really needed to push hard in the House. We spent a lot of time in House," said Shannon Angielski, executive director of the Carbon Utilization Research Council, whose members include Arch Coal Inc., clean energy advocacy group ClearPath Action, National Rural Electric Cooperative Association and Duke Energy Services, among others.

The Carbon Capture Coalition is now hoping to tuck carbon capture technologies into any infrastructure package approved by Congress as it presses lawmakers for additional tax incentives, such as allowing companies to fund projects through tax-exempt bonds and master limited partnerships. And it argues the expanded credit, known as 45Q after its place in the tax code, is already changing the discussion over the viability of projects.

"The business case now gets much stronger with 45Q. And once there's a business case for these things, that's why they're going to happen," said Roger Ballentine, president of consultancy Green Strategies, at an event last week. "The economics are very attractive. ... Before, those conversations weren't even happening."

The credit that made it into the Bipartisan Budget Act, H.R. 1892 (115), hikes prior incentives to now provide a \$50 credit for every metric ton of carbon stored underground, up from \$20 under

the previous measure. And oil producers who pump carbon dioxide into oil wells for enhanced oil recovery will get \$35 per ton, up from \$10. The Joint Committee on Taxation estimated expanding the CCS incentive will cost about \$689 million over a decade.

The new measure also lifts barriers that made it more difficult for developers to take advantage of the original 45Q credit. Companies now have 12 years to claim the credit with no cap on the amount available, and the threshold for projects was lowered to sites where 100,000 metric tons of carbon dioxide is injected annually from the 500,000 metric ton requirement previously.

The previous credit established in 2008 appeared likely to hit its 75 million ton cap within the year. Some 52.8 million metric tons had been claimed as of May 2017, according to the IRS. And that looming cap had left anxious investors on the fence unwilling to pony up for new projects, according to advocates.

Still, there skepticism that the credits will enable owners of coal-fired power plants to retrofit their facilities even as it creates opportunities for other industrial projects.

"It really doesn't look like it's an immediate driver of new coal projects," said Kevin Book, an analyst at ClearView Energy Partners. "When you build in capture rather than retrofit capture, the economics tend to be better."

Even with the incentive, coal-fired and natural gas projects that are retrofitted with CCS will still struggle to be cost-competitive with increasingly low-cost renewable energy projects, especially since companies have not pushed to develop the technology and bring down its costs, according to Jules Kortenhorst, CEO of the think tank Rocky Mountain Institute.

"I appreciate the bipartisan policymaking to bring carbon capture and sequestration into being, but that is only going to work if the industry puts their shoulder to the wheel in a much more significant way than they have done so far," said Kortenhorst, who also serves on the Energy Transition Commission.

Hunter Johnston, a partner with Steptoe & Johnson who represents the Louisiana-based Lake Charles Methanol plant that will separate CO<sub>2</sub> from synthetic gas produced from petroleum coke, said companies would still need to create additional financial tools to take advantage of the credit.

"How are you going to actually monetize this and how is this going to actually work in real projects? It's not a slam dunk even with the tax credit," he said.

There's also deep skepticism from many in the environmental community who argue the credit will go predominantly to enhanced oil recovery, which they say will ultimately result in higher carbon emissions. They also point to Southern Co.'s failure to build CCS into its \$7.5 billion Kemper power plant in Mississippi as an example of the potential financial boondoggle from such projects.

The Natural Resources Defense Council has pulled out of the newly rebranded Carbon Capture

Coalition, saying it couldn't support the credit that could benefit energy companies involved in enhanced oil recovery, where CO2 is pumped into old oil wells to help stimulate oil crude production.

"We don't support fossil fuel subsidies, including subsidies for enhanced oil recovery, that would conflict with the need to reduce our dependence on those fuels," said Ana Unruh Cohen, NRDC's director of government affairs, in a statement. "We will continue to work to advance the use of carbon capture and storage in ways that help reduce carbon pollution, increase clean energy jobs and phase out our reliance on fossil fuels."

Other greens expressed disappointment that their usual climate hawk allies in Congress supported the credit.

"Sen. Whitehouse should know better," said Lukas Ross, a climate and energy campaigner with Friends of the Earth, in an interview. "Supporting this proposal amounts to providing political cover for some of the most dangerous and ignorant energy rhetoric coming from this administration."

But Whitehouse defended the credit's inclusion as a "huge breakthrough" because it enabled "recognition that carbon-free power has value relative to carbon polluting power."

"Unfortunately, we had to build it into the tax code as a benefit rather than putting it in as a fee, which would be a much more economy-wide way to go, but I'll take that opening because now we're in the conversation about paying for carbon-free power," Whitehouse said, adding he hadn't heard any complaints from green groups yet.

*To view online [click here](#).*

[Back](#)

**Dem governors band together to thwart Trump's policies** [Back](#)

By Edward-Isaac Dove and Gabriel DeBenedetti | 02/25/2018 11:25 AM EDT

In the era of President Donald Trump, Democrats are the ones looking to return power to the states.

On climate, guns, trade, infrastructure, immigration and more, they've gone from talking about the importance of a strong federal government to looking for any and every way to do the opposite of what the federal government is doing — and in many cases, to take action where the administration won't.

"We have a national administration that is not keeping with where the American people are, and when it becomes as evident as it is, then it's incumbent on people with half a brain to figure out a way around that," said Connecticut Gov. Dannel Malloy.

Malloy is a member of the Climate Alliance, formed in the wake of Trump's announcement that he'd withdraw the United States from the Paris climate agreement, and last week joined three other governors in forming States for Gun Safety. Both groups are explicitly aimed at taking action in opposition to policy being written in Congress and making agreements among states that circumvent Washington.

Just as Democratic attorneys general have borrowed the strategies Republicans used in the courtroom against the Obama administration, Democratic governors are now learning from GOP counterparts who once turned down stimulus money and declined to open Obamacare exchanges.

Asked whether moves like Democrats are now making violate the traditional concept of federalism, Malloy shot back, "I think it goes against the concept of a federal government that will consistently deny reality."

Trump is set to host many governors on Monday at the White House, on their last day in town as part of this weekend's National Governors Association conference. But over the weekend, Democratic governors boasted of "pushback to damaging Trump policies" and providing "an alternate vision for governing."

Trump has not shown much interest in hearing from Democratic governors. Many remember their reception at the White House last year, when the president took questions from only one Democratic governor and many Republican governors. Though he speaks with Republicans, he has rarely consulted with Democratic governors on anything, including in recent weeks when Republican governors were among those he called in for a session on infrastructure.

There are only 16 Democratic governors, though they're hoping to boost that number in November. Jay Inslee, the Washington governor who's a member of the Climate Alliance and chair of the Democratic Governors Association, said he sees turning states away from Trump policy as an essential part of the campaign-trail argument for gubernatorial candidates this year.

He's already making that argument in his state, Inslee said.

"This is the tale of two Washingtons: Washington state and Washington, D.C.," Inslee said. "In the real Washington, we just passed a \$4 billion dollar infrastructure plan and the largest infrastructure transportation plan in the history of the state of Washington. In Washington, D.C., Donald Trump can't build a birdhouse."

"In the real Washington, we just passed a bump stock ban and we're looking at some other issues," he said. "In the fake Washington, they're totally shackled from progress by the NRA."

Republicans aren't as impressed with the Democratic governors' actions.

Utah Gov. Gary Herbert, a Republican, said he sees the Democrats' turn away from emphasizing the importance of the federal government as "circumstantial ethics" at play.

As someone who's always liked states to have the power, Herbert said, he's glad to see the Trump administration leave the states to themselves.

"I appreciate the fact that we have an administration ... that many governors say, 'This administration is easy to work with,'" Herbert said. "They understand the sovereignty of the states, and are trying to give us more flexibility and autonomy to implement programs."

Democratic governors don't see themselves as gaining autonomy from an easy administration. They say it's more about rushing to the barricades to stop Trump and picking up the slack when he won't act.

"It falls to governors to take action, and Dem governors are here, we stand ready not just to protect our people to get the president, but to get the job done," said Rhode Island Gov. Gina Raimondo.

"Democrats do have a sense of a stronger role for the federal government, but they also have a sense of what we need to do to make lives better if the federal government's not going to do its job," said Pennsylvania Gov. Tom Wolf.

Democrats acknowledge that what they're doing themselves these days would likely lead to even more Republicans turning away from the next Democratic president. But they say that the necessity they feel in resisting Trump means they can't be worried about that.

"My effort at net neutrality was because Montanans and Americans expect it, and at times when there's a lot of inaction in Washington, D.C., that we can still move things forward," said Montana Gov. Steve Bullock. "So it's not necessarily partisan: Governors get things done when there's nothing getting done in the Senate."

"I know how we have to behave, given this administration," said New Jersey Gov. Phil Murphy, who's a month into a job he won by campaigning with plans to run a state government that is very liberal and very different from that of his predecessor, Chris Christie.

Maybe, Wolf said, this is all about Democrats rediscovering roots that go back long before modern politics and Franklin Roosevelt's assertion of power during the New Deal.

"Go back to Jefferson," Wolf said. "It's exactly the way Democrats were."

*To view online [click here](#).*

[Back](#)

**Bishop leads congressional trip to Australia, New Zealand** [Back](#)

By Anthony Adragna | 02/23/2018 04:13 PM EDT



House Natural Resources Chairman [Rob Bishop](#) (R-Utah) has taken a bipartisan congressional delegation to Australia and New Zealand for energy and defense-related activities, a committee aide told POLITICO today.

The U.S. lawmakers will look at energy activities in Australia, which is one of the world's leading exporters of liquefied natural gas, examine New Zealand's deregulation of its energy sector and learn about "the strategic importance of the two nations as a counterbalance to less-friendly powers in the Pacific," the aide said.

Neither the committee nor Speaker [Paul Ryan](#)'s office would immediately provide a list of lawmakers on the trip.

**WHAT'S NEXT:** Upon returning from the trip, a House Natural Resources subcommittee will hold a [hearing](#) to examine the role of the U.S. in global LNG markets and the geopolitical benefits.

*To view online [click here](#).*

[Back](#)

#### **ClearPath Action Fund endorses Heller, Curbelo** [Back](#)

By Elena Schneider | 02/26/2018 05:02 AM EDT

ClearPath Action Fund, a super PAC founded by Republican Jay Faison, announced today that it's endorsing Florida Rep. [Carlos Curbelo](#) and Nevada Sen. [Dean Heller](#), along with financial commitments to back the Republican incumbents.

"Rep. Curbelo and Sen. Heller have really put their shoulders to the wheel for clean energy, for the good of their constituents and for the country," Faison said in a statement provided to Campaign Pro.

ClearPath Action Fund announced earlier this month that it's putting \$1 million behind an outside effort, including TV and digital ads, to boost Pennsylvania Rep. [Ryan Costello](#).

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[Back](#)

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